

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION (COLUMBUS)**

BRIAN ECHARD and STEPHEN and
HEATHER SHIMP *on behalf of*
themselves and all others similarly
situated,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

No. 2:21-CV-05080-MHW-KAJ

Judge Michael H. Watson
Magistrate Judge Kimberly A. Jolson

SECOND AMENDED COMPLAINT –
CLASS ACTION

JURY DEMAND

Plaintiffs Brian Echard and Stephen and Heather Shimp (“Plaintiffs”), individually and on behalf of all others similarly situated, hereby file this class action complaint against Defendant Wells Fargo Bank, N.A. (“Wells Fargo”). Plaintiffs makes the allegations herein upon personal knowledge as to themselves and their own acts, and upon information and belief and based upon investigation of counsel as to all other matters, as set forth herein.

I. INTRODUCTION

1. This lawsuit involves a nationwide forbearance scam that Wells Fargo perpetrated on consumers throughout the nation. This scam was intended to create significant wrongful profit for Wells Fargo and did so. Perhaps most troubling is that this scam took advantage of a government program that was designed to help vulnerable homeowners during the pandemic, and instead preyed upon and victimized these same vulnerable customers.

2. While the scam was perpetrated uniformly, it had a different legal impact on borrowers who were active duty servicemembers or veterans with a U.S. Department of Veterans Affairs (“VA”) guaranteed loan (hereafter “military borrowers”).

1 3. Throughout our nation’s history, members of our military services have been
2 asked to make many sacrifices for our nation. These American heroes leave family, friends, and
3 the comforts of civilian life to answer our country’s call to duty. Many also leave behind
4 employment, a career, and financial security. For some the sacrifices go much further and can
5 cause lasting or permanent impacts on the servicemembers and their families.

6 4. In return for these sacrifices, our nation provides veterans certain ongoing benefits
7 and protections. One important benefit is that servicemembers and veterans can obtain assistance
8 in securing a mortgage to buy a home guaranteed by the VA.

9 5. The VA loan program goes beyond assistance in obtaining a loan. It also provides
10 veterans with protections and assistance throughout the period of the loan. These protections are
11 guaranteed by statutes, regulations, and detailed guidance provided by the VA.

12 6. In addition to the protections guaranteed by law, military borrowers have a
13 reasonable expectation of even greater care from mortgage lenders and servicers like Wells
14 Fargo. Wells Fargo, like other lenders, promises to go further in assisting military borrowers to
15 overcome bumps in the road that could otherwise lead to foreclosure or other harms. The bank
16 promises to provide military home borrowers with a “dedicated team” of financial professionals
17 and “expanded mortgage benefits that go beyond what the SCRA requires,”¹ including
18 “mortgage assistance to those who can’t keep up with payments.”²

19 7. In 2020, through no fault of their own, military borrowers throughout the nation
20 were faced with financial hardship because of the COVID-19 pandemic. This was a time when
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22

23
24 ¹ <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited May 1, 2021).

² <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited May 1, 2021).

1 these American heroes needed Wells Fargo to provide the “dedicated team,” “dedicated
2 attention,” and “support” it promised.

3 8. Instead of living up to its obligation to military borrowers under the law and the
4 bank’s promises, Wells Fargo found a way to profit off these military borrowers by wrongfully
5 enrolling them into a forbearance program without their informed and legal consent that would
6 only increase their financial hardship.

7 9. Wells Fargo’s “forbearance scam” harmed military and non-military customers
8 across the nation, but the fraud against military borrowers is distinct and particularly egregious
9 because they are entitled to special protections under federal law, numerous state laws, and under
10 Wells Fargo’s explicit and implicit promises to support and protect these customers.

11 10. As described herein, Wells Fargo twisted a national crisis and a government relief
12 program into a way to make profit at the expense of its military and nonmilitary customers. As a
13 result of the COVID-19 outbreak, Congress passed the Coronavirus Aid, Relief and Economic
14 Security (“CARES”) Act in March 2020, which among other things, provides relief to millions
15 of Americans who are struggling to pay their mortgage payment as a result of the economic
16 difficulties caused by the pandemic.

17 11. In part, the CARES Act instructed mortgagees and servicers to create mortgage
18 forbearance provisions for all federally-backed mortgages. The CARES Act makes clear that
19 participating in a COVID-19 mortgage forbearance program is entirely voluntary; that is, a
20 mortgagor must be informed of the various terms and conditions of the program and then
21 affirmatively decide to enter the program.

22 12. Congress intentionally included a volitional act on the part of the mortgagor to opt
23 into forbearance. This is because mortgage forbearance has serious consequences for
24

1 homeowners, including an inability to obtain additional credit and/or to refinance any existing
2 loans.

3 13. Per the Consumer Financial Protection Bureau (“CFPB”), before a bank servicing
4 a loan can grant forbearance, it must receive a request for such relief and an attestation of a
5 COVID-19-related financial hardship from the borrower.

6 REQUIREMENTS FOR SERVICERS.— (1) IN GENERAL.— *Upon*
7 *receiving a request for forbearance from a borrower under subsection*
8 *(b), the servicer shall with no additional documentation required other*
9 *than the borrower’s attestation to a financial hardship caused by the*
10 *COVID–19 emergency* and with no fees, penalties, or interest (beyond the
11 amounts scheduled or calculated as if the borrower made all contractual
12 payments on time and in full under the terms of the mortgage contract)
charged to the borrower in connection with the forbearance, provide the
forbearance for up to 180 days, which may be extended for an additional
period of up to 180 days at the request of the borrower, provided that, the
borrower’s request for an extension is made during the covered period,
and, at the borrower’s request, either the initial or extended period of
forbearance may be shortened.³

13 14. Wells Fargo has unilaterally, without informed and legal consent, and without
14 requesting or receiving any financial hardship attestation, opted unwitting borrowers into its
15 COVID-19 mortgage forbearance program.

16 15. Additionally, when borrowers logged onto Wells Fargo’s website to view their
17 accounts, the webpage included a link at which borrowers could obtain information regarding
18 Wells Fargo’s COVID-19 relief program. Upon the click of a button which made no mention of
19 forbearance, unsuspecting borrowers’ accounts were placed into forbearance without their
20 informed knowledge or consent.

21 16. Many Wells Fargo mortgage customers who were placed into Wells Fargo’s
22 COVID-19 mortgage forbearance program received no notice that Wells Fargo had placed their
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24 ³ <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf> (last visited May 1, 2021) (emphasis added).

1 mortgages into forbearance. Some borrowers only found out (if at all) when they attempted to
2 apply for credit, including for refinancing of their mortgage, and were denied, then learning from
3 the credit report that their mortgage loans were in forbearance. Others found out when they
4 attempted, but were unable, to make regularly scheduled mortgage payments with Wells Fargo.

5 17. When Wells Fargo did send their customers a template notice informing them that
6 Wells Fargo had placed their loans into forbearance, the notice was both insufficient and
7 inaccurate.

8 18. Furthermore, after illegally placing customers' accounts into forbearance, Wells
9 Fargo perpetuated the problems for these customers by failing to properly apply payments that
10 had been made to the mortgage, failing to properly report payments actually made to credit
11 agencies, and failing to provide accurate and legally sufficient periodic statements to these
12 customers.

13 19. For military borrowers, this scam is even more indefensible. Wells Fargo had
14 promised to provide military borrowers with "support," including a "dedicated team" of financial
15 advisers. Yet, rather than providing any of those services when they were needed, Wells Fargo
16 ran the same scam on the military customers.

17 20. In addition, these military borrowers had additional legal rights available to them
18 to address financial difficulties. But Wells Fargo never disclosed any of those protections or
19 rights to the military borrowers before enrolling them into the forbearance program.

20 21. As a result of being placed into forbearance, these homeowners, including
21 Plaintiffs and the putative class, suffered damages including but not limited to an inability to
22 access credit to finance to lower interest rates, which is especially egregious during this time in
23 which mortgage interest refinance rates were historically low. They also must deal with the
24 difficult situation of removing their mortgages from a program they did not want.

1 22. Interest rates were at all-time lows, and many homeowners sought to take
2 advantage of these historically low rates by refinancing. If an account is placed into forbearance,
3 those borrowers cannot typically refinance for many months, if not years, even after bringing the
4 account current.

5 23. This forbearance scam profited Wells Fargo in a number of ways, including
6 because the bank receives additional compensation for each loan placed in forbearance. In
7 addition, Wells Fargo directly profits from its customers inability to refinance – the harm
8 inflicted on the customers – because this allows Wells Fargo to retain these mortgages at above-
9 market rates. These customers are damaged, and Wells Fargo profits, by the difference between
10 the lifetime costs of their over-market mortgage and the mortgage that they would have been
11 entitled to if they had not been wrongfully placed in forbearance.

12 24. Wells Fargo has not denied many of these core allegations, stating via its
13 spokesperson Tom Goyda that “[i]n the spirit of providing assistance, we may have
14 misinterpreted customers’ intentions in a small number of cases.”⁴ Although Wells Fargo did not
15 identify the complete number of borrowers who were unwillingly placed into its forbearance
16 program, it reported having received 1,600 complaints of unwanted forbearances.⁵

17 II. JURISDICTION AND VENUE

18 25. Plaintiffs invoke the jurisdiction of this Court pursuant to the Truth in Lending
19 Act (“TILA”), 15 U.S.C. § 1601; the Real Estate Settlement Procedures Act (“RESPA”), 12
20 U.S.C. § 22601; and the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681.

23 ⁴ <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/> (last visited May 1, 2021).

24 ⁵ <https://www.nbcnews.com/business/personal-finance/1-600-customers-say-wells-fargo-paused-their-mortgage-payments-n1241620> (last visited May 1, 2021).

1 which is headquartered in Des Moines, Iowa. Wells Fargo Bank operates throughout Ohio and
 2 every state in the country.

4 IV. FACTUAL ALLEGATIONS

5 A. Wells Fargo provides special programs and promises to military borrowers.

6 36. Wells Fargo, like many banks and lenders, competes for the business of military
 7 borrowers by promising support, dedicated services, and protections beyond those required by
 8 law.

9 37. Wells Fargo claims to be “Committed to our Military Veterans” and that it has
 10 been “Proudly supporting military veterans and their families for more than 160 years.”⁶ But it
 11 makes its strongest promises to military home borrowers:

12 ***It’s our honor to serve you – every step of the way***

13 You’ve served our country - and Wells Fargo is committed to serving you. Our goal is to
 14 enable long-lasting, sustainable homeownership, provide home financing education and
 support you with career transition.⁷

15 38. Wells Fargo maintains a website dedicated to wooing military borrowers into its
 16 mortgage programs, promising to provide “Dedicated attention. Specialized services.” It claims,
 17 “We appreciate the dedication of our nation’s military personnel and their families. We are
 18 committed to providing home financing options to meet the unique needs of the military and
 19 veteran community.”⁸ The bank promises:

20 **A dedicated team – just for you.** We have a team of financial professionals who’ve
 21 been specially trained to meet your specific needs. Their understanding of military and
 veteran culture makes them uniquely qualified to help you achieve your homeownership
 goals.

22
 23 ⁶ <https://www.wellsfargo.com/military/veterans/> (last visited May 1, 2021).

24 ⁷ https://www.benefits-mortgage.com/loans/mil0307/index-affinity.page?_ga=2.28828095.286286478.1611800248-1619906565.1611800248 (last visited May 1, 2021).

⁸ <https://www.benefits-mortgage.com/loans/mil0307/loan-programs/military-loans.page> (last visited May 1, 2021).

1 That dedicated webpage also promises:

2 **Help for military personnel**

3 Active-duty service members and their families facing payment challenges may qualify
4 for special military benefits.

5 39. In addition, Wells Fargo states that it promises to provide military borrowers with
6 protections that goes beyond those required by law: “The Servicemembers Civil Relief Act
7 (SCRA) may offer protection or relief to members of the military, their spouses, partners, and
8 dependents. Wells Fargo appreciates the service of America's military personnel. That’s why we
9 offer expanded mortgage benefits that go beyond what the SCRA requires.”⁹ These include:

10 **Expanded benefits**

11 In addition to the benefits offered under SCRA, Wells Fargo helps service members
12 by:

- 13 • Providing mortgage assistance to those who can’t keep up with payments.
- 14 • Applying foreclosure protection if service members are deployed in a hazardous
15 area or deployed internationally in readiness for military action.¹⁰

16 40. Wells Fargo tells military borrowers that it has “home financing specialists” that
17 are “here to support” military borrowers. It maintains a “Wells Fargo Military Bank Center.”¹¹
18 Additionally, Wells Fargo’s military website states, “Whether you’re buying or refinancing a
19 home, responding to PCS orders, or simply researching VA loan benefits, our home financing
20 specialists are here to support you.”¹² Defendant touted itself as a source of trusted information
21 for servicemembers about SCRA benefits and VA backed loans.

22 **B. Military borrowers are entitled to special legal protections.**

23 ⁹ <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited May 1, 2021).

24 ¹⁰ <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited May 1, 2021).

¹¹ <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited May 1, 2021).

¹² <https://www.wellsfargo.com/military> (last visited May 1, 2021).

41. C.F.R. § 38.4300-93 and the VA Servicer Handbook,¹³ which is a handbook provided to servicers by the VA itself, provide special legal protections to military borrowers with a VA-backed loan. Servicers owe these borrowers a higher duty of care and disclosure, which include but are not limited to specific methods of keeping borrowers informed, quality control procedures, avoiding foreclosure whenever possible, explaining all loss mitigation options, continuing loss mitigation throughout the foreclosure process, exhausting all loss mitigation efforts before foreclosure, not allowing the final payment to be more than twice the amount of the preceding installments, providing special options to borrowers in distress as the result of a disaster, the right to prepay, and allowing prepayments to be reapplied to prevent subsequent default.

42. Moreover, the VA provides financial counseling to help military borrowers with a VA loan. As the VA website explains:

Can I get VA financial counseling to help avoid foreclosure?

- **If you're a Veteran or the surviving spouse of a Veteran,** we'll provide financial counseling—even if your loan isn't a VA direct or VA-backed loan
- **If you have a VA direct or VA-backed loan,** you can contact us anytime to request that we assign a VA loan technician to your loan. Our technicians can offer you financial counseling and help you deal with your servicer (or work with you directly in the case of a VA direct loan).¹⁴

43. The VA specifically advises military borrowers to carefully consider the pros and cons before requesting forbearance as result of the pandemic:

“Should I request forbearance? Only you can make this decision, but here are some things to consider. If you can continue making payments despite the financial impact of COVID-19, you may not want to request forbearance. While not making monthly mortgage payments for six months may seem to have immediate benefits, the payments

¹³ Available at https://www.benefits.va.gov/WARMS/M26_4.asp (last visited May 1, 2021).

¹⁴ <https://www.va.gov/housing-assistance/home-loans/trouble-making-payments/> (last visited May 1, 2021).

missed during the COVID-19 forbearance period will become due when the COVID-19 forbearance ends. Please see the questions and answers above to understand how this may affect you later.¹⁵

C. The CARES Act

44. In response the COVID-19 outbreak, on March 27, 2020, Congress passed the CARES Act. A component of the CARES act aid package was designed to assist American homeowners with federally backed mortgages who were in distress as a result of the COVID-19 pandemic.

45. Amongst other things, the CARES Act provided homeowners with Government Sponsored Enterprises (“GSE”) loans experiencing financial hardships because of COVID-19 with the option to request up to 180 days of forbearance on their mortgage. Specifically, Section 4022(b) provides in relevant part that:

(1) IN GENERAL.—During the covered period [beginning February 15, 2020 and ending on June 30, 2020], a borrower with a Federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency *may request* forbearance on the Federally backed mortgage loan, regardless of delinquency status, by—

(A) submitting a request to the borrower’s servicer and

(B) affirming that the borrower is experiencing a financial hardship during the COVID-19 emergency.

(2) DURATION OF FORBEARANCE.— *Upon a request by a borrower for forbearance* under paragraph (1), such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days *at the request of the borrower*, provided that, *at the borrower’s request*, either the initial or extended period of forbearance may be shortened.

¹⁵ <https://benefits.va.gov/homeloans/cares-act-frequently-asked-questions.asp#FAQ4> (last visited May 1, 2021).

1 See CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, PL 116-136, March
2 27, 2020, 134 Stat. 281, § 4022(b) (emphasis added).

3 46. Section 4022(c) of the CARES Act provides in relevant part that:

4 *Upon receiving a request for forbearance from a borrower*
5 under subsection (b), the servicer shall with no additional
6 documentation required other than the borrower's
7 attestation to a financial hardship caused by the COVID-
8 19 emergency and with no fees, penalties, or interest
9 (beyond the amounts scheduled or calculated as if the
10 borrower made all contractual payments on time and in full
11 under the terms of the mortgage contract) charged to the
12 borrower in connection with the forbearance, provided the
13 forbearance up to 180 days, which may be extended for an
14 additional period of up to 180 days at the request of the
15 borrower, provided that, the borrower's request for an
16 extension is made during the covered period, and, at the
17 borrower's request, either the initial or extended period of
18 forbearance may be shortened.

19 *Id.*, § 4022(c) (emphasis added).

20 47. The plain language of these provisions makes it abundantly clear that
21 participation in a mortgagee's or servicer's mortgage COVID-19 forbearance program is
22 voluntary and only to be initiated at the request of the mortgagor clients.

23 48. For mortgagors to avail themselves of the COVID-19 mortgage forbearance
24 option, they were instructed to contact their loan servicer to obtain information and, if
appropriate, request forbearance.¹⁶

49. The CARES Act also provides that lenders are not permitted to report forborne
payments to the credit bureaus, which means that borrowers who request forbearance are not
supposed to see any impact on their credit scores as a result of their participation in forbearance

¹⁶ <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/request-forbearance-or-mortgage-relief/> (last visited May 1, 2021).

1 programs. *See* CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, PL 116-
 2 136, March 27, 2020, 134 Stat. 281, § 4021.

3 50. Wells Fargo stated publicly in July 2020 that it had deferred 2.5 million payments
 4 for consumer and small business customers since the start of the pandemic.¹⁷

5 **D. Wells Fargo Unilaterally and/or Without Informed Consent Opted Homeowners**
 6 **into its Forbearance Program.**

7 51. Since the passage of the CARES Act, Defendant unilaterally placed borrowers
 8 into its mortgage forbearance programs without informed or lawfully required consent.

9 52. Thousands of homeowners have been put into mortgage forbearance programs
 10 they did not knowingly request, causing substantial problems for those homeowners, including
 11 preventing homeowners from taking out new home loans or refinancing their existing mortgages.

12 53. Wells Fargo's practice of placing unwitting customers into forbearance has
 13 prompted hundreds of consumer complaints. For instance, complaints filed with the CFPB have
 14 risen dramatically since the beginning of the pandemic, and many of those have come from
 15 homeowners who complain that they were placed in forbearance without requesting it.¹⁸

16 54. In particular, as one consumer told the CFPB, a Wells Fargo employee admitted
 17 "that the system is like a 'hair trigger'" automatically placing loans into forbearance "even
 18 though I did nothing to start a forbearance."¹⁹

22 ¹⁷ <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/> (last visited May 1,
 23 2021).

¹⁸ <https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html>
 (last visited May 1, 2021).

¹⁹ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898> (last visited May 1,
 24 2021).

1 55. Wells Fargo has not denied these allegations, stating via its spokesperson Tom
 2 Goyda that “[i]n the spirit of providing assistance, we may have misinterpreted customers’
 3 intentions in a small number of cases.”²⁰

4 56. The actions taken by Defendant were in direct contravention of the CARES Act
 5 requirements that forbearances be provided in response to the request of the borrower, and with
 6 an attestation of hardship due to COVID-19. In many instances, the borrowers received no notice
 7 that they had been placed into forbearance at all, and in those instances where borrowers
 8 received some notice, it was woefully inadequate under the requirements of RESPA, 12 U.S.C.
 9 §§ 2601 *et seq.*

10 **E. Wells Fargo Failed to Properly Manage Mortgages Once in Forbearance.**

11 57. Wells Fargo’s illegal actions went beyond enrolling unwitting customers into its
 12 forbearance program. Once customers were wrongfully enrolled into the program, Wells Fargo
 13 continued to act negligently and unlawfully by (1) failing to properly apply payments made by
 14 customers to the mortgage; (2) failing to properly report payments made by customers to credit
 15 agencies; and (3) failing to provide accurate and legally sufficient period statements to these
 16 customers.

17 **F. Wells Fargo Benefits Financially from its Practice of Unilaterally Opting**
 18 **Homeowners into its Forbearance Program.**

19 58. Wells Fargo is compensated financially by the various federal agencies on whose
 20 behalf it services borrowers’ loans when it filed forbearance notices and when it completes loan
 21 retention workout options with borrowers whose loans have been placed into forbearance
 22 pursuant to the CARES Act.

23
 24 ²⁰ <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/> (last visited May 1, 2021).

1 59. For every Fannie Mae and Freddie Mac mortgage loan Wells Fargo places into
2 forbearance, Wells Fargo stands to receive a minimum of \$500 and up to \$1,000 in incentive
3 payments, depending on which workout option Wells Fargo's borrower accepts at the conclusion
4 of the forbearance term.

5 60. For Ginnie Mae Loans Wells Fargo places into forbearance, Wells Fargo is also
6 entitled to receive incentive compensation for post-forbearance loan workouts, although the
7 structure for calculating the amount of these incentive payments and the available workout
8 options are different (in immaterial ways) for Ginnie Mae loans, depending on whether the loan
9 was originated by the VA, the USDA, or the FHA.

10 61. Wells Fargo's portfolio of Fannie Mae and Freddie Mac loans carries principal
11 and interest payment advance obligations that are similar to its advance obligations for Ginnie
12 Mae loans, with one important difference specifically applicable to loans in CARES Act
13 forbearance: Wells Fargo's principal and interest advance obligations on Fannie Mae and
14 Freddie Mac loans that received a CARES Act forbearance terminate after Wells Fargo makes
15 four advances of borrowers' missed principal and interest payments.

16 62. So long as Fannie Mae and Freddie Mac loans are placed into a CARES Act
17 forbearance, Wells Fargo is not required to repurchase delinquent Fannie Mae and Freddie Mac
18 loans in order to be allowed to cease making principal and interest advances. Instead, after Wells
19 Fargo makes advances for four monthly principal and interest payments missed by the borrower
20 on a loan that Wells Fargo has placed in a CARES Act forbearance, under applicable Fannie
21 Mae and Freddie Mac servicing guidelines, Wells Fargo no longer has any further obligation to
22 advance principal and interest payments on the loan.

63. Therefore, regardless of whether a loan is backed by Ginnie Mae, Fannie Mae, or Freddie Mac, Wells Fargo benefits from placing loans into CARES Act forbearances by limiting its exposure to principal and interest advance obligations in the event of future defaults.

G. Unwanted Forbearance Injures Consumers

64. Wells Fargo has engaged in a practice of unilaterally opting mortgagors into unwanted forbearance programs which has caused an injury to those homeowners.²¹

65. Even if Wells Fargo does not report forborne accounts as delinquent, there are nonetheless many practical and immediate impacts of participating in a mortgage forbearance program; mainly, participation in a forbearance program prohibits homeowners from taking out new loans or refinancing their existing mortgages.

66. Wells Fargo has made notes on the reports they send to credit reporting agencies that the homeowners who they have placed into forbearance – including those who never requested it – have suspended their mortgage payments.²²

67. Fannie Mae and Freddie Mac, which, along with the Federal Housing Administration and the VA, who fund or insure the vast majority of mortgages from lenders, do not allow borrowers with a loan in forbearance to either refinance or to obtain a new loan until one year after the loan payments are up to date again.

68. Wells Fargo has also failed to report payments made by borrowers to the credit reporting agencies after those borrowers discover they have been placed into forbearance and commence making payments again.

²¹ <https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html> (last visited May 1, 2021).

²² <https://www.cnn.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html> (last visited May 1, 2021).

69. Some individuals, including Plaintiff Brian Echard, after learning that their mortgages had been placed into forbearance noticed that their credit scores had declined as a result of Wells Fargo's illegal actions.

H. Plaintiff Brian Echard

70. Plaintiff Brian Echard has a mortgage for which Wells Fargo is the lender and servicer. Wells Fargo collects payments and performs services for Mr. Echard's mortgage secured to his primary residence located in Westerville, Ohio.

71. The contracts applicable to Mr. Echard's mortgage include: the "Security Instrument" which is "the Mortgage" document itself between Plaintiff and Wells Fargo dated September 20, 2016 and "the Note," which is the promissory note signed by Borrower and dated September 20, 2016.

72. Mr. Echard is a military veteran. He began his military career as an Army ROTC cadet. After graduating from college in 1996, he was commissioned as second lieutenant in the Army Reserves. In 2001, he was considering ending his military career at the end of his eight-year contractual obligation to the U.S. Army. However, as a result of the terrorist attack on September 11, 2001, he chose to remain in the military and commit to accepting a company commander role. Mr. Echard and his unit were mobilized in 2003 and deployed to Iraq in 2004, where they spent 385 days. His unit was the last unit in Operation Iraqi Freedom II to leave the theater of war. Mr. Echard transitioned back to civilian life in 2005 after returning from deployment.

73. Mr. Echard's mortgage is a VA backed mortgage.

74. Prior to March 2020, Mr. Echard had setup automatic payment withdrawal for his mortgage with Wells Fargo.

1 75. Around March 31, 2020, Mr. Echard submitted an inquiry to Wells Fargo to ask
2 about payment deferment options, as he was concerned about his future financial security in light
3 of the pandemic.

4 76. On March 31, 2020, Wells Fargo responded via email encouraging Mr. Echard to
5 “view the self-service options available for your account on wells Fargo.com or through the Wells
6 Fargo Mobile app” Despite the assurance that Wells Fargo gives to military borrowers, it
7 offered him no “support.” It did not explain to him the rights of military borrowers. It did not
8 connect him to the supposed “dedicated team” that was supposed to help military borrowers
9 attain sustainable homeownership.

10 77. Sometime between April 2 and April 8, 2020, Mr. Echard logged into his Wells
11 Fargo account on the Wells Fargo website. During that website visit, Mr. Echard did not
12 knowingly agree to a forbearance. As a former bank employee, he understands the significance
13 of a forbearance and would not have knowingly signed up for forbearance on his mortgage.
14 Additionally, because Mr. Echard had a VA backed loan, he knew there were other types of
15 relief and assistance available to him besides placing the account into forbearance. Yet, that
16 website visit caused Wells Fargo to place him into forbearance.

17 78. On April 8, 2020, Mr. Echard received a letter from Wells Fargo which confirmed
18 that Wells Fargo had placed Mr. Echard’s loan into forbearance. This letter, which was issued
19 after the loan was wrongfully placed in forbearance, was designed to be misleading. It
20 repeatedly uses the term “short-term payment relief,” rather than forbearance. Only once, in an
21 attachment, is the term forbearance used. It also states, “Thank you for letting us know about a
22 financial hardship you’re facing,” when Mr. Echard never informed Wells Fargo of a financial
23 hardship or gave Wells Fargo any financial information. Similarly, the attachment to this letter
24 states, “New Monthly Payment Amount: \$0.00. This payment suspends the current monthly

1 mortgage payment and it's based on your ability to pay." Mr. Echard never gave Wells Fargo
2 information about his ability to pay.

3 79. Wells Fargo unilaterally suspended Mr. Echard's automatic monthly payments
4 without his request to revoke his authorization for monthly payments. On July 21, 2020, Mr.
5 Echard learned he was in forbearance when he attempted to refinance his mortgage through
6 NewDay USA and was denied.

7 80. On August 14, 2020, Mr. Echard received a letter from Wells Fargo. The cover
8 sheet to this letter stated, "Due to the COVID-19 crisis, we've provided you with short-term
9 payment suspension (forbearance). We are legally required to send you the enclosed letter. This
10 letter is for your information only." (emphasis in original). This letter was specifically "For
11 customers with VA loans." It also states, "We would also like to notify you of the availability of
12 homeownership counseling, and any rights you or your dependents have under the
13 Servicemembers Civil Relief Act." Thus, it is clear that Wells Fargo understood that Mr. Echard
14 was a military borrower.

15 81. The August 14, 2020 letter Mr. Echard received from Wells Fargo was also
16 designed to be misleading. It states, "You do not need to contact us as there is nothing for you to
17 do right now. You are not required to make any payments during the forbearance. We will
18 contact you near the end of the forbearance to review your financial situation and discuss
19 options." Then this same letter also states that Mr. Echard's account is "due for 4 payment(s) for
20 the months of May 1, 2020 through August 14, 2020 The loan is currently due for May 1,
21 2020 and due for each subsequent monthly payment since that date." On its face, this letter is
22 conflicting and confusing, as it says both that he does not need to do anything and is not required
23 to make payment and also that his account is currently due.

1 82. On September 9, 2020, Mr. Echard received a letter from Wells Fargo in response
2 to a complaint, stating, “We apologize for any confusion this process may have caused you.” The
3 letter contains inconsistencies. On the one hand it states, an ‘account in forbearance’ code on his
4 credit report “does not affect your FICO credit score.” But it acknowledged that “the fact that
5 your account is in forbearance may affect your ability to qualify for new credit or refinance.”
6 Furthermore, this letter states, “We can confirm that once you agreed to the short term assistance
7 being placed on the account, we sent you a letter dated April 08, 2020.” Mr. Echard never agreed
8 to short term assistance.

9 83. After Mr. Echard learned that his account had been wrongfully placed in
10 forbearance, he resumed payments on his mortgage. However, Wells Fargo failed to properly (1)
11 apply those payments to the mortgage; (2) report those payments to credit agencies; or (3)
12 calculate information on subsequent periodic payments.

13 84. Mr. Echard’s August 28, 2020 statement from Wells Fargo states his mortgage
14 payment made August 28, 2020 is “unapplied.”

15 85. Mr. Echard’s October 18, 2020 statement from Wells Fargo states his mortgage
16 payment made October 17, 2020 is “unapplied.”

17 86. Mr. Echard’s December 7, 2020 statement from Wells Fargo states his November
18 27, 2020 payment is “unapplied.”

19 87. Mr. Echard’s January 14, 2021 Wells Fargo states both his January 3, 2021 and
20 his November 27, 2020 payments are “unapplied.”

21 88. On December 1, 2020, Mr. Echard’s FICO Score 8 dropped by at least 74 points
22 from 747 to 673.

23 89. Because of the reduction in Mr. Echard’s FICO Score, he was unable to qualify
24 for the best refinancing rates. Based on information and belief, the letter Mr. Echard received

1 from Wells Fargo dated April 8, 2020 is a form letter which Wells Fargo also sent to all
2 Nationwide Class members, all Nationwide Military Class members, and all Ohio Class
3 members.

4 90. Based on information and belief, the letter Mr. Echard received from Wells Fargo
5 dated August 14, 2020 is a form letter which Wells Fargo also sent to all Nationwide Military
6 Class members.

7 **I. Plaintiffs Stephen and Heather Shimp**

8 91. Plaintiffs Stephen and Heather Shimp had several mortgages for which Wells
9 Fargo was the servicer. Wells Fargo collected payments and performed services for the Shimp's
10 mortgages secured to properties located in Indianapolis, Indiana and Ogden, Utah.

11 92. Due to Lieutenant Stephen Shimp's military service, the Shimps move often and
12 are currently residing in Okinawa, Japan. Lieutenant Shimp became a commissioned officer in
13 the Navy in 2017 through the Health Professions Scholarship Program for dental school. He
14 went to officer school and received his first active duty assignment in 2020.

15 93. Lieutenant Shimp is currently on active duty and was on active duty at the time
16 Wells Fargo placed the Shimp's mortgages into the CARES Act forbearance program.

17 94. The contracts applicable to the Shimp's mortgages include: the "Security
18 Instrument" which is "the Mortgage" document itself between Heather Shimp and the lender,
19 NBH Bank, dated June 26, 2018 for the first property located in Indianapolis, Indiana; "the
20 Note," which is the promissory note signed by Heather Shimp and dated June 26, 2018 for the
21 first property located in Indianapolis, Indiana; the "Security Instrument" which is "the
22 Mortgage" document itself between Heather Shimp and the lender, NBH Bank, dated June 22,
23 2018 for the second property located in Indianapolis, Indiana; "the Note," which is the
24 promissory note signed by Heather Shimp and dated June 22, 2018 for the second property

1 located in Indianapolis, Indiana; the “Security Instrument” which is the “Deed of Trust”
2 document itself between Heather Shimp and the lender Security National Mortgage Company,
3 dated March 31, 2016 for the property located in Ogden, Utah; and “the Note,” which is the
4 promissory note signed by Heather Shimp and dated March 31, 2016 for the property located in
5 Ogden, Utah.

6 95. Prior to March 2020, the Shimps had set up automatic payment withdrawal for
7 their mortgages with Wells Fargo.

8 96. Around April 6, 2020, Ms. Shimp logged into her Wells Fargo account on the
9 Wells Fargo website. Based upon that interaction, Wells Fargo placed three of her four
10 mortgages into forbearance. Ms. Shimp did not request a forbearance on her fourth mortgage
11 serviced by Wells Fargo.

12 97. Around April 21, 2020, Ms. Shimp called Wells Fargo to inquire about her
13 options regarding suspending payments on one of her mortgage accounts due to the COVID-19
14 pandemic.

15 98. Around April 8, 2020, Wells Fargo placed all of the Shimp’s mortgage accounts
16 into the COVID-19 forbearance program without Ms. Shimp’s informed consent.

17 99. Wells Fargo unilaterally suspended Ms. Shimp’s automatic monthly payments
18 without her request to revoke her authorization for monthly payments.

19 100. The Shimps did not receive any written communication from Wells Fargo
20 regarding the placement of their accounts into forbearance or the cancellation of their automatic
21 payments.

22 101. In June of 2020, the Shimps learned they were in forbearance and that their
23 automatic payments had been cancelled when they attempted to purchase a new home and were
24 denied, due to their mortgage accounts with Wells Fargo being in forbearance. Due to this denial,

the Shimps were forced to rent an AirBnB to live in while this issue was resolved. To make matters worse, Ms. Shimp was at the end stages of her pregnancy at this time. Ultimately, the closing date on their new home was delayed by approximately one month.

102. After Ms. Shimp learned that her accounts had been wrongfully placed in forbearance, she resumed payments and paid all the missed payments. However, Wells Fargo failed to properly (1) apply those payments to the mortgage; (2) report those payments to credit agencies; or (3) calculate information on subsequent periodic payments.

J. Class Action Allegations

103. Plaintiffs brings this action pursuant to Federal Rule of Civil Procedure 23(b)(3) on behalf of themselves and all others similarly situated. They, along with other class members who may be named as class representatives at the time a motion is filed to certify a proposed class, will represent the following classes:

Nationwide Military Class:

All military borrowers with a mortgage loan serviced by Wells Fargo whose mortgage was placed into Wells Fargo's COVID-19 Mortgage Forbearance Program without their informed and lawful consent.

Nationwide Class:

All customers with a mortgage loan serviced by Wells Fargo whose mortgage was placed into Wells Fargo's COVID-19 Mortgage Forbearance Program without their informed and lawful consent.

Ohio Class:

All Ohio customers with a mortgage loan serviced by Wells Fargo whose mortgage was placed into Wells Fargo's COVID-19 Mortgage Forbearance Program without their informed and lawful consent.

104. Numerosity- Members of each of the three proposed classes are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to both parties and the Court. Upon information and belief,

Defendant, either directly or through affiliated entities, is in possession of the names and addresses of all class members. While the exact number of Class Members remains unknown at this time, upon information and belief, there are thousands of putative Class Members throughout the United States who are generally ascertainable through discovery. The information currently known to Plaintiffs that Wells Fargo has received at least 1,600 complaints is already sufficient to support the numerosity requirement for a class action.²³

105. Class treatment is particularly appropriate here because the national presence of Defendant means that it conducts business in every jurisdiction in the United States. Further, this matter involves multiple federal statutes which were extensively and harmfully misapplied by Defendant.

106. Commonality- This action involves common questions of law and fact, which predominate over any questions affecting individual Class Members. These common legal and factual questions include, but are not limited to, the following:

- a. Whether Defendant owed and breached duties owed to the Nationwide Military Class, including statutory, contractual, or fiduciary duties;
- b. Whether Wells Fargo negligently or intentionally enrolled customers in forbearance programs without their informed consent;
- c. Whether Wells Fargo's actions or inactions violated the consumer protection statutes invoked herein;
- d. Whether the Plaintiffs and putative class were damaged by Wells Fargo's conduct and, if so, the appropriate amount of damages;

²³ <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/> (last visited May 1, 2021).

e. Whether, because of Wells Fargo's misconduct, Plaintiffs and the putative Class Members are entitled to equitable and declaratory relief, and if so, the nature of such relief;

107. Typicality- The representative Plaintiffs' claims are typical of the claims of members of the Classes. Plaintiffs and all the members of the Classes have been injured by the same wrongful practices of Wells Fargo. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of members of the Classes and are based on the same legal theories.

108. Adequacy- Plaintiffs will fully and adequately assert and protect the interests of the Classes, and have retained class counsel who are experienced and qualified in prosecuting class actions, and in particular, class actions brought on behalf of military customers. Neither the Plaintiffs nor their attorneys have any interests contrary to or in conflict with the Classes.

109. Predominance and Superiority- A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class Members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class Members are likely in the millions of dollars, the individual damages incurred by each Class Member are too small to warrant the expense of individual suits. The likelihood of individual Class Members prosecuting their own separate claims is remote, and even if every member of the Classes could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Moreover, active duty servicemembers who are part of the Nationwide Military Class and who are deployed do not have the time or resources to undertake individual litigation from their deployment.

110. The nature of this action and the nature of laws available to Plaintiffs and the Classes make the use of the class action device a particularly efficient and appropriate procedure

1 to afford relief to Plaintiffs and the Class Members for the wrongs alleged because Wells Fargo
2 would necessarily gain an unconscionable advantage since they would be able to exploit and
3 overwhelm the limited resources of each individual Class Member with superior financial and
4 legal resources; the costs of individual suits could unreasonably consume the amounts that would
5 be recovered; proof of a common course of conduct to which Plaintiffs were exposed is
6 representative of that experienced by the Class and will establish the right of each member of the
7 Class to recover on the cause of action alleged; and individual actions would create a risk of
8 inconsistent results and would be unnecessary and duplicative of this litigation.

9 **V. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **Breach of Contract and Breach of Implied Covenant of Good Faith and Fair Dealing**

12 111. Plaintiffs incorporate each and every allegation contained in the preceding
13 paragraphs as if set forth again herein.

14 112. Plaintiffs bring this claim on behalf of themselves and all three classes.

15 113. Wells Fargo's forbearance scam was furthered by its breach of the notice
16 provision of the mortgage contract, which requires that all notices "in connection" with the
17 mortgage be "in writing," sent "by first class mail to Lender's address stated herein," and "shall
18 not be deemed to have been given to Lender until actually received by Lender." Mortgage Sec.
19 15. This provision exists to ensure that communications between a borrower and lender are clear
20 and traceable. Wells Fargo breached this provision by treating a vague internet communication
21 as a formal notice in connection with the mortgage. Wells Fargo designed its electronic
22 statements and website to solicit vague and informal communications from vulnerable
23 customers, and then improperly treated those vague and informal communications as formal
24 notices under their mortgages.

1 114. Had Wells Fargo adhered to contractual notice requirements, customers across the
2 nation would not have been placed into forbearance without consent. This contractual breach
3 evaded the procedural protections that should have allowed customers to make and communicate
4 their decision about whether or not to enter forbearance. This breach removed all clarity and
5 traceability from this critical decision and communication. Because customers were left without
6 volition in the matter and never made a “decision,” it did not matter that the VA advised military
7 borrowers to carefully consider the pros and cons before requesting forbearance.

8 115. By unilaterally placing Plaintiffs and Class Member mortgage loans in
9 forbearance without their consent, Wells Fargo interfered with Plaintiff’s ability to act upon the
10 contracts including Term 1, “Payment of Principal, Interest, Escrow Items, Prepayment Charges,
11 and Late Charges” of the Mortgage and Term 3, “Payments” of the Note.

12 116. Once Wells Fargo placed a customer into forbearance, it failed to properly apply
13 payments made by customers to their mortgage. This constituted a breach of the mortgage,
14 including Section 2, “Application of Payments or Proceeds.”

15 117. In addition, Wells Fargo’s actions violated federal regulations that were
16 incorporated into the contracts. Section 16 of the mortgage states that “All rights and obligations
17 contained in this Security Instrument are subject to any requirements and limitations of
18 Applicable Law.” Thus, rights and obligations in the mortgage document concerning application
19 of payments, notices, and forbearance are subject to “requirements and limitations of Applicable
20 Law.” In addition, the Note explicitly states the regulations under 38 C.F.R. Part 36 and 38
21 U.S.C. Chapter 37 “shall govern the rights, duties, and liabilities of the parties.” By violating
22 requirements and limitations of Applicable Law relating to application of payments, notices, and
23 forbearance, Wells Fargo breached the mortgage contracts.

1 118. Wells Fargo breached the contracts by failing to adhere to the VA Regulations
2 that are incorporated into the contracts. For example, 38 C.F.R. § 36.4350(b) requires loan
3 holders to have a system to promptly respond to inquiries, which Wells Fargo breached by
4 failing to have such system in place and by failing to actually promptly respond to plaintiffs'
5 multiple inquiries about being wrongfully placed into forbearance. Wells Fargo also failed to
6 comply with 38 C.F.R. §. 36.4350(f) requiring the bank to have in place a system to comply with
7 consumer protections in the Real Estate Settlement Procedures Act and to otherwise protect
8 customers who are deemed to be in delinquency.

9 119. Plaintiffs, the Class Members, and Wells Fargo were parties or beneficiaries to
10 contracts that contain an implied covenant of good faith and fair dealing. The implied covenant
11 obligates the parties to cooperate so that each party may obtain the full benefit of performance of
12 the contracts. The duty of good faith and fair dealing means that parties may not interfere with or
13 fail to cooperate in the other party's performance. Neither party may engage in conduct that
14 impairs or prevents the other party from enjoying the benefits of the contracts or engage in
15 conduct that prevents the other party from performing under the contracts.

16 120. Wells Fargo owed the Nationwide Military Class members an additional duty of
17 good faith, as these borrowers are entitled to special protections for VA backed loans, under the
18 SCRA, and additional rights and care under Wells Fargo's own promises made to military
19 borrowers.

20 121. Wells Fargo knows which of its customers are military borrowers and knows that
21 such military borrowers are entitled to additional rights and care.

22 122. Military borrowers have a reasonable expectation that Wells Fargo will take
23 additional care to inform them of their rights and options before placing them into a program that
24 will negatively impact their financial status and their ability to avoid foreclosure. Military

1 borrowers received such promises of care from Wells Fargo and are parties to a contract that
2 requires Wells Fargo to take additional care.

3 123. By failing to meet its obligations of candor and care, terminating monthly
4 payments without request, and placing Plaintiffs and Class Members in forbearance without their
5 informed and legal consent, Wells Fargo frustrated and interfered with their ability to perform
6 under the contract including their ability to make contractual periodic payments, and failed to
7 cooperate with the Class Members' performance of their contracts.

8 124. No reasonable party would expect that Wells Fargo would end automatic
9 payments or put their mortgage into forbearance without informed, legal consent. Military
10 borrowers have additional reasons to believe this would not occur.

11 125. Wells Fargo engaged in conduct that was contrary to the spirit of the contracts and
12 the Class Members' rights thereunder. Wells Fargo lacked diligence in performing its duties,
13 acted recklessly in its servicing of the Class Members' mortgages, and abused its power by
14 placing loans in forbearance without informed and legal consent for its own interest.

15 126. By its actions, Wells Fargo engaged in conduct that was contrary to the spirit of
16 the contracts, lacked diligence, and constituted an abuse of its power.

17 127. Wells Fargo knew, reasonably should have known, or recklessly disregarded their
18 duty to treat Plaintiffs and Class Members fairly and deal with them in good faith.

19 128. Wells Fargo's negligence, breach of duties, and breach of contract were the
20 proximate cause of damages sustained by the Plaintiffs and the Classes. Plaintiffs and Class
21 Members' damages include, but are not limited to, damage to their credit including increased
22 borrowing costs, increased interest accrued as a result of the forbearance, and an inability to
23 refinance while in forbearance.

24 **SECOND CAUSE OF ACTION**

Breach of Fiduciary Duty

129. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

130. Plaintiffs bring this claim on behalf of themselves and the Nationwide Military Class.

131. Defendant did not have a typical arms-length lender/borrower relationship with Plaintiffs and the Nationwide Military Class Members. In the unique facts of this case, Defendant took on a role of fiduciary to the Plaintiffs and the Nationwide Military Class.

132. The facts giving rise to the fiduciary duty include by are not limited to the following:

- Plaintiffs and members of the Nationwide Military Class are afforded special protections for their VA backed loans.
- Defendant specifically marketed to servicemembers, and particularly to those servicemembers who were deployed overseas²⁴;
- Defendant volunteered advice to servicemembers and their families with the intent that Defendant would become their trusted advisor on financial and non-financial matters. The website for Defendant's proprietary program, wells Fargo.com/military, states, for example: "Whether you're buying or refinancing a home, responding to PCS orders, or simply researching VA loan benefits, our home financing specialists are here to support you." Defendant touted itself as a source of trusted information for servicemembers about SCRA benefits and VA backed loans.

²⁴ <https://www.wellsfargo.com/military> (last visited May 1, 2021).

1 when the customer never gave Wells Fargo information about his ability to pay; stating both that
2 the customer is not required to make payments and also that his or her account is currently due.

3 139. Plaintiffs and Class Members detrimentally relied upon Wells Fargo's material
4 omissions of fact and the misrepresentations and purposefully misleading statements contained
5 in form letters when Wells Fargo did not inform Plaintiffs and Class Members promptly that
6 their accounts had been placed in forbearance and Plaintiffs and Class Members did not
7 challenge the forbearance. Where Wells Fargo did inform Plaintiffs and Class Members after the
8 fact that accounts had been placed into forbearance, that notice was insufficient to actually place
9 these customers on notice. Moreover, when Plaintiffs and Class Members continued to make
10 monthly mortgage payments after learning of the forbearance status, they did so with the
11 understanding and expectation that doing so would result in these loans being serviced in the
12 ordinary course of business.

13 140. Plaintiffs' and Class Members' reliance on Wells Fargo's material omissions of
14 fact and the misleading and false statements made in form letters sent to Plaintiffs and Class
15 Members were justified and reasonable, as Plaintiffs and Class Members had no basis to assume
16 and were not on notice that Wells Fargo would defraud them by placing their loans into
17 forbearance status without authorization or informed consent. Further, no common law, statute,
18 or other agreement among Plaintiffs and Class Members and their mortgage lender and/or Wells
19 Fargo authorized Wells Fargo to place these borrowers' loans into forbearance without their
20 informed consent.

21 141. Plaintiffs and Class Members were injured by Wells Fargo's material omissions
22 of fact, misleading and false statements, and fraudulent placement of their loans into forbearance
23 status, experiencing credit damage, and inability to refinance at historically low rates, loss of
24 access to new credit and existing credit cards and home equity lines of credit, reputational

1 damage, frustration, and various out-of-pocket costs and other pecuniary damages and general
2 damages.

3 **FOURTH CAUSE OF ACTION**

4 **Violations of Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* (TILA)**

5 142. Plaintiffs incorporate each and every allegation contained in the preceding
6 paragraphs as if set forth again herein.

7 143. Plaintiffs bring this claim on behalf of themselves and all three classes.

8 144. 12 C.F.R. § 226.36(c)(1)(i) prohibits a servicer of a consumer credit transaction
9 secured by a consumer's principal dwelling from failing to "credit a payment to the consumer's
10 loan account as of the date of receipt, except when a delay in crediting does not result in any
11 charge to the consumer or in the reporting of negative information to a consumer reporting
12 agency"

13 145. 12 C.F.R. § 1026.36(c)(1) prohibits servicers of a closed-end consumer credit
14 transaction, secured by a consumer's principal dwelling, from failing to credit a periodic
15 payment to the consumer's loan account as of the date of receipt, with some exceptions not
16 applicable here.

17 146. 15 U.S.C. § 1639f(a) prohibits a servicer from failing to credit payments that are
18 part of "a consumer credit transaction secured by a consumer's principal dwelling" on the day
19 the servicer received the payment.

20 147. Wells Fargo has failed to properly credit periodic payments to Plaintiffs and other
21 Class Members' loan accounts. In Mr. Echard's experience, Wells Fargo failed to properly apply
22 his mortgage payments to his account after he resumed payments on his mortgage in August
23 2020.

1 148. Pursuant to 12 C.F.R. § 1026.41, a servicer of a closed-end consumer credit
2 transaction secured by a dwelling (a “mortgage loan”) shall provide the consumer, for each
3 billing cycle, a periodic statement meeting specifically enumerated requirements, including but
4 not limited certain details related to the amount due, an explanation of the amount due, and a past
5 payment breakdown.

6 149. Defendant violated 12 C.F.R. § 1026.41 by providing periodic statements on
7 mortgage loans to Plaintiffs and other Class Members which do not conform to the structure
8 required, and which inaccurately reflect and/or omit information required by the regulation,
9 including information related to forbearance and its effects. The statements Mr. Echard received
10 between August 2020 and December 2020 did not explain that the change in payment amount
11 was due to forbearance.

12 150. TILA, 15 U.S.C. § 1640, provides a private right of action against creditors for
13 violations of these provisions, which includes suits against entities that violate TILA and
14 previously owned the loan obligation. *See* 15 U.S.C. § 1641(f). As the lender, Wells Fargo is a
15 “creditor” under 15 U.S.C. § 1602(g), which defines the term as follows:

16 The term “creditor” refers only to a person who both (1) regularly extends, whether
17 in connection with loans, sales of property or services, or otherwise, consumer
18 credit which is payable by agreement in more than four installments or for which
19 the payment of a finance charge is or may be required, and (2) is the person to
whom the debt arising from the consumer credit transaction is initially payable on
the face of the evidence of indebtedness or, if there is no such evidence of
indebtedness, by agreement.

20 151. Wells Fargo has demonstrated a pattern and practice of failing to comply with 12
21 C.F.R. § 226 because Wells Fargo has engaged in a practice of placing borrowers in unwanted
22 and unauthorized forbearance agreements on a nation-wide basis, failing to properly credit
23 payments, and failing to provide accurate and legal periodic statements.

FIFTH CAUSE OF ACTION

153. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

155. 12 C.F.R. § 1024 imposes certain requirements on Defendant, including procedures for loss mitigation and requirements related to applications for loan modifications, violations of which are enforceable under Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2605(f), and 15 U.S.C. § 1640. *See also*, 12 C.F.R. § 1024.41(a).

- Wells Fargo has failed to provide Plaintiffs and Class Members notices as required by 12 C.F.R. § 1024.41;

- 1 • Wells Fargo has misrepresented the status of the review of loss mitigation
- 2 applications and requests submitted by Plaintiffs and Class Members, in violation of
- 3 12 C.F.R. § 1024.41;
- 4 • Wells Fargo has acknowledged yet failed to properly and timely evaluate and
- 5 respond to Plaintiffs' and Class Members' completed loss mitigation applications, in
- 6 violation of 12 C.F.R. § 1024.41;
- 7 • Wells Fargo has failed to properly advise, inform and assist Plaintiffs and Class
- 8 Members of curative actions including the right to appeal any denials, in violation of
- 9 12 C.F.R. § 1024.41;
- 10 • Wells Fargo has deceptively placed Plaintiffs and Class Members into their
- 11 "COVID-19 Forbearance Plan" without informed prior consent or approval, in
- 12 violation of 12 C.F.R. § 1024.41;
- 13 • Wells Fargo has failed to maintain continuity of contact for Plaintiffs and Class
- 14 Members, in violation of 12 C.F.R. § 1024.40;
- 15 • Wells Fargo failed to maintain a system to "advise borrowers how to cure
- 16 delinquencies [and] protect their ... credit rating," in violation of 38 C.F.R. § 36.4278.

17 157. Wells Fargo has placed Plaintiffs' and other Class Members' mortgage loan
18 accounts into forbearance and/or extended existing forbearance periods without Plaintiffs' and
19 Class Members' knowledge, informed consent, or approval in violation of the Real Estate
20 Settlement Procedures Act.

21 158. Wells Fargo has failed to apply Plaintiffs' and Class Members' monthly mortgage
22 payments as of the date they came due and failed to report publicly that payments made by
23 Plaintiffs and Class Members were received and applied.

1 166. Wells Fargo also willfully violated 15 U.S.C. § 1681s-2 by failing to adequately
2 investigate and correct inaccurate credit reporting information with the credit reporting agencies
3 after Plaintiffs made appropriate complaints.

4 167. Wells Fargo knew, or should have known, that Plaintiffs and the Class Members
5 did not request or affirmatively and legally consent to the mortgage loan forbearances that Wells
6 Fargo reported to the credit reporting agencies.

7 168. Wells Fargo knew, or should have known, that Plaintiffs and the Class Members
8 had made mortgage payments after being placed into forbearance, and that these mortgage
9 payments should be reported to credit agencies.

10 169. The forbearance notation on the Class Members' credit reports clearly indicates to
11 potential creditors or other third parties that the class members experienced some sort of
12 financial hardship. These forbearance notations adversely affect class members' ability to obtain
13 credit.

14 170. Failing to report payments made on Plaintiffs' and Class Members' mortgage
15 accounts to credit agencies negatively affected these consumers credit scores.

16 171. Wells Fargo has breached its duties as set forth in 15 U.S.C. § 1681s-2 by failing
17 to adequately investigate and fully correct inaccurate credit reporting information with the credit
18 reporting agencies following Plaintiffs' dispute of the credit reporting errors or Plaintiffs'
19 informing Wells Fargo of the fraudulent placement of the account in forbearance.

20 172. Wells Fargo knew that the presence of the forbearance notations in the Class
21 Members' credit reports would damage the Class Members' ability to obtain new credit, which
22 may be essential to a consumer's daily life.

23 173. Wells Fargo's failure to report its receipt of payments made by Plaintiffs and the
24 Class Members during the period in which Wells Fargo improperly furnished information to the

1 Credit Reporting Agencies indicating that their loans were in forbearance status also adversely
2 affects Plaintiffs' and the Class Members' ability to obtain credit, including but not limited to
3 preventing and/or significantly impeding borrowers' ability to refinance their home mortgage
4 loans and/or to borrow against the equity in their homes.

5 174. Wells Fargo failed to promptly delete, modify, or block reporting of inaccurate,
6 incomplete, or unverifiable information in response to each complaint raised by Plaintiffs and the
7 Class Members.

8 175. Wells Fargo failed to fully correct the information it supplied to the Credit
9 Reporting Agencies regarding Plaintiffs' and the Class Member's accounts.

10 176. Plaintiffs and the Class Members have incurred actual damages and have suffered
11 physically, mentally, and emotionally as a result of Wells Fargo's willful violations of the
12 FCRA.

13 177. Based on Wells Fargo's violations of 15 U.S.C. § 1681s-2, Plaintiffs and the
14 Class Members are entitled to actual damages, costs, and attorneys' fees pursuant to 15 U.S.C. §
15 1681o.

16 178. Moreover, as a result of each and every negligent violation of the FCRA,
17 Plaintiffs and the Class Members are entitled to statutory damages and reasonable attorneys' fees
18 pursuant to 15 U.S.C. § 1681o.

19 179. Plaintiffs and the Class Members are also entitled to statutory damages, punitive
20 damages, and reasonable attorneys' fees for each of Wells Fargo's willful violation of the FCRA
21 pursuant to 15 U.S.C. § 1681n(a).

22 **SEVENTH CAUSE OF ACTION**

23 **Unjust Enrichment**

EIGHTH CAUSE OF ACTION

184. Plaintiffs incorporate each and every allegation contained in the preceding paragraphs as if set forth again herein.

185. Plaintiffs bring this claim on behalf of themselves and all three classes.

186. Defendant, as a lender, owes their borrowers a duty to exercise reasonable care to avoid a foreseeable risk of injury to the borrower.

187. Defendant, as a lender and/or servicer providing professional services, owes its customers a duty not to supply false information for guidance of others in their business transactions and to exercise reasonable care or competence in obtaining or communicating information.

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1 188. Defendant owed Plaintiffs and the Nationwide Military Class an additional duty
2 of care as these customers are military customers and veterans who are entitled to special
3 protections for VA backed loans.

4 189. Defendant breached its duty of care to Plaintiffs and the Class Members by
5 enrolling Plaintiffs and the Class Members in the forbearance program without their informed
6 and legal consent.

7 190. Defendant further breached its duty of care to Plaintiffs and the Class Members
8 by violating TILA, RESPA, and FCRA.

9 191. Defendant further breached its duty of care to Plaintiffs and the Class Members
10 by making misrepresentations and/or omissions on their website regarding the consequences of
11 clicking a button on the borrower's homepage to "defer" payments.

12 192. Defendant further breached its duty of care to Plaintiffs and the Class Members
13 by supplying false information for guidance in their business transactions, on which Plaintiff and
14 the Classes reasonably and justifiably relied.

15 193. Defendant further breached its duty of care to Plaintiffs and the Class Members
16 by failing to exercise reasonable care or competence in obtaining and/or communicating
17 information on which Plaintiffs and the Classes would reasonably and justifiably rely for
18 guidance in their business transaction.

19 194. Defendant further breached its duty of care to Plaintiffs and the Class Members
20 by making false or purposely misleading statements in form letters sent to Plaintiffs and Class
21 Members in form letters sent after placing Plaintiffs' and Class Members' accounts into
22 forbearance.

23 195. And finally, Defendant breached its duty of care after illegally enrolling
24 customers in the forbearance program by (1) failing to properly apply payments to the mortgage;

1 (2) failing to properly report payments actually made to credit agencies; and (3) failing to
2 provide accurate and legally sufficient periodic statements.

3 196. Defendant knew, reasonably should have known, or recklessly disregarded its
4 duty to treat Plaintiffs and the Class Members fairly and deal with them in good faith.

5 197. Defendant's negligence and breach of their duties was the proximate cause of
6 damages sustained by the Plaintiffs and the Class Members.

7
8 **NINTH CAUSE OF ACTION**

9 **Violation of the Ohio Deceptive Trade Practices Act**

10 198. Plaintiffs incorporate each and every allegation contained in the preceding
11 paragraphs as if set forth again herein.

12 199. Plaintiffs bring this claim on behalf of themselves and the Ohio Class.

13 200. Ohio's Deceptive Trade Practices Act ("DTPA"), Ohio Revised Code §§ 4165 *et*
14 *seq.* prohibits deceptive trade practices.

15 201. Wells Fargo is a "person" as defined by Ohio Revised Code § 4165.01(D)

16 202. The DTPA provides in part that a "person engages in a deceptive trade practice
17 when, in the course of the person's business, vocation, or occupation, the person . . .
18 represents that goods or services have . . . characteristics . . . , uses, [or] benefits . . . that they do
19 not have." ORC § 4165.02(A)(7).

20 203. Wells Fargo violated the statute when it falsely represented services available for
21 mortgage debt assistance which it did not provide.

22 204. For example, Wells Fargo deceptively represented on its website that it had
23 services for assistance for mortgage relief, when in fact it was deceptively and without
24 authorization, putting accounts of those inquiring about relief services into forbearance.

- 1 g. All costs of prosecuting this action, including attorneys' fees and expert fees as
2 may be allowable under applicable law;
- 3 h. An award of pre-and post-judgment interest;
- 4 i. The imposition of a constructive trust containing all assets, funds, and property
5 derived from Defendant's wrongful acts, with Defendant serving as constructive
6 trustees for the benefit of Plaintiffs and ClassMembers;
- 7 j. An accounting of all assets, funds, revenues, and profits received and retained by
8 Defendant as a result of their improper actions;
- 9 k. Award appropriate individual relief as requested above; and
- 10 l. Grant such other relief as this Court may deem just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs hereby demand a trial by jury on all issues so triable.

13
14 RESPECTFULLY SUBMITTED this 12th day of September, 2022.

15
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